

BRINGING ON THE NEW LEADERSHIP

(Bringing New Political Appointees into Your Agency)

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H: OGE Conference 2001 – Briefing the New Boss

1. Introduction: Phase II – Orienting new leaders.
2. Pre-appointment meeting.
 - a. Goals of Meeting.
 1. Build a relationship with Ethic Counselor as reasonable, knowledgeable, responsive and valuable advisor.
 2. Advise potential official of major downsides of Government service: e.g., divestiture, earned income limitation, political activities limitations.
 3. Orient potential official to nomination process.
 4. Evaluate potential official's familiarity with the Federal Government.
 - b. Meet as soon as possible.
 - c. Use a written, concise summary for them to highlight and use for reference.
 - d. What to brief: -**“Welcome to the Government, here’s a list of your restrictions.”**
 1. Outside earned income (5 C.F.R. 2636, subpart C; E.O. 12674, section 102)
 2. Very brief synopsis of Standards of Conduct (OGE summary: http://www.usoge.gov/pages/about_oge/ethics_program.html)
 3. Post-Government employment restrictions
 4. Restrictions on political activities (where applicable)
 5. Conflicts of interest (and how they are resolved through divestiture, disqualification, etc.)
 6. Attorney-unique problems
 - a. Conflicts involving former clients: see Bar Rules
 - Partnership dissolution: Payment for representations by partnership after official becomes appointed may trigger 18 USC 203.
 7. Delayed Compensation:

- a. Extraordinary Payments 5 C.F.R. 2635.503 b.
Supplement to Salary 18 U.S.C. 209
 - 8. Spousal issues (Spouse usually not a Federal official. Perks?)
 - 9. (For PAS officials only) Review confirmation process and identify roles of White House, OGE, Senate committee.
 - 10. Pre-confirmation restrictions (White House Chief of Staff memo dated January 26, 2001: Employment Guidelines for Potential Presidential Appointees)
 - 11. Special Government Employee Status prior to appointment?
 - 12. Assistance in completing forms (White House PDS, SF 278, SF 86, Senate committee questionnaire)
 - 13. Assistance with policy issues.
 - 14. New staff: discussion of applicable restrictions.
- e. What to brief: For non-career SES appointees
- 1. Difference between SES 4 and SES 5.
 - 2. Special Government Employee status?

(Some potential nominees may decide against Government service at this point.)

3. Post-appointment Meeting.
- a. When to Brief – Purpose of Timing Decision: Set the Ethical Tone Early
 - 1. Preferably make initial contact before official comes on board
 - (a) Introduce yourself and your office and staff
 - (b) Alert boss to any rules that boss must know about right away (i.e., recusal rules; use of government property)
 - 2. Provide substantive brief as soon after arrival as possible
 - b. How/Why to Brief – Objective of Brief: Validate Ethics Program for Boss
 - 1. Face-to-face brief in his/her office
 - (a) Include boss' closest staffers, AA, confidential assistant
 - (b) Schedule briefings of staff if they are not present
 - (c) Take along your key assistants
 - 2. Establish relationship with new boss/staff.
 - 3. Explain where you fit in the hierarchy and what you do. Emphasize that you are on his/her side.

4. Show how you can make his/her job easier
 - (a) Establish how your office will best interact with boss, staff
 - (b) Financial disclosure reports
 - (c) Reports & clearances for which you are responsible
 5. Show how he/she can make yours easier
 - (a) Explain importance of boss' support for ethics program
 - (i) Discuss how ethical failures reflect on boss/agency
 - (ii) Use examples
 - (b) Set boss' role in annual ethics training program
 - (i) Invitation to train should come from boss
 - (ii) Boss should introduce your training session
 - (iii) Explain importance of boss' presence at training
 6. Build relationship of candor and confidence
 - (a) With boss and his staff
 - (b) Ensure boss' key staff knows whom to contact for what
 7. Provide synopsis of rules, briefing books, etc.
 - (a) Does boss like to have copies for himself or rely on staff?
 - (b) Provide boss' staff with "ethics aids" (brief sheets, information papers, handbooks) suited to their roles
 8. Provide samples of routinely-used forms (SF 278, Travel clearance Form, or WAG-determination form)
- c. What to Brief – Approach: Tailor briefing to boss' background, covering:
1. Conflict of Interest (18 USC 208) & Prohibited Holdings rules
 - (a) What must boss divest?
 - (b) What positions must boss resign from?
 - (c) What matters must boss avoid participating in?
 - (i) Exemptions
 - (ii) Waivers
 - (d) What must boss report?
 2. Appearance concerns/Covered relationships (5 CFR 2635.502)
 - (a) Boss' former employer/clients
 - (i) One-year cooling-off period
 - (ii) "Catch-all" provision
 - (iii) Bar Rules for attorneys
 - (b) Boss' spouse's or parents' employer
 - (c) Organization in which Boss is active
 - (d) Agency policy on 502(d) authorizations
 3. Outside activities (5 CFR 2635 Subpart H; Agency-specific rules)

- (a) Board membership ramifications
- (b) Endorsements
- (c) Fundraising limitations
- (d) Limits on outside teaching, speaking, writing
- (e) Outside earned income limitations

4. Gifts! Basic Rule: Don't accept absent an exception

- (a) What are not gifts? (5 CFR 2635.201-203)
 - (i) Gift exclusions
 - (ii) Not from prohibited source – based on position
 - (iii) Discounts/Items paid for by the Government
- (b) From prohibited sources (5 CFR 2635 Subpart B)
 - (i) Lunch issues - \$20/WAG
 - (ii) Receptions/Invitations
 - (iii) Friendship exception
 - (iv) Other exceptions
 - (v) Disposal of
 - (vi) Reporting requirements
- (c) Foreign government (5 U.S.C. 7342)
 - (i) Rule, including accepting on behalf of the Gov't
 - (ii) Agency procedure on processing
 - (iii) Agency policy on display
- (d) Awards (5 CFR 2635.204(d))
 - (i) Rules governing
 - (ii) Agency policy
- (e) Among employees/staff (5 CFR 2635 Subpart C)
 - (i) From juniors
 - (ii) To juniors
 - (iii) Personal hospitality and host/hostess gifts
 - (iv) Office parties; gift exchanges

5. Travel Rules (41 CFR 301 and 304)

- (a) Reimbursable (31 USC 1353; 41 CFR 304)
 - (i) GSA Rules & Agency policy
 - (ii) Clearance procedures in place at agency
 - (iii) Reporting requirements
 - (iv) Supplement training for poc on boss' staff
- (b) First/Premium class rules (41 CFR 301-10.121 et seq.)

- (c) Frequent flyer/upgrade issues (41 CFR 301-53)
 - (i) Proper use of official points
 - (ii) Agency policies
 - (iii) Use of personal points on official travel
 - (d) Use of Government Travel Card (41 CFR 301-51)
 - 6. Other Standards of Ethical Conduct issues often faced at agency – Agency Supplemental Standards
 - 7. Miscellaneous “ethics-type” Issues
 - (a) Use of Government resources (5 CFR 2635.704)
 - (i) Use of staff members’ time
 - (ii) Use of official vehicles (See 41 CFR 101-6.400)
 - (iii) Use of Government phones (41 CFR 101-35.100)
 - (iv) Use of computers/internet
 - (v) Issues associated with initial move into office
 - (b) Funding issues (GAO “Red Book” - Principles of Federal Appropriations Law)
 - (i) Use of appropriated funds
 - (ii) Representational funds
 - (c) Spousal issues
 - (i) On travel (See 41 CFR 304-1.3 for §1353 policy)
 - (ii) At gatherings (See 5 CFR 2635.204(g)(6) for WAG policy)
 - (iii) Other social issues
 - (iv) Conflicts with spouse’s outside interests
 - (d) Hatch Act/Politics/Agency-specific limitations (P.L. 103-94; 5 CFR 733-734)
 - (i) PAS officials § 734 – Subpart E
 - (ii) Career SES § 734 – Subpart D
 - (e) Relations with the Hill/Lobbying issues
 - (i) 18 USC 1913
 - (ii) Restrictions in appropriations act.
- 4. **Have agency head issue public pronouncement regarding ethics in agency.**